IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION NO.: 7:07-CV-166-H

JANICE HOSLER on behalf of herself and all other similarly situated individuals,)))	
Plaintiffs,)))	
v.)))	ORDER
SMITHFIELD PACKING COMPANY, INC.,)	
Defendant.)	

This matter is before the court on defendant's motion to decertify the conditionally certified class approved by the court [DE #363]. United States Magistrate Judge James E. Gates filed a Memorandum and Recommendation ("M&R") on August 23, 2010, recommending that defendant's motion be denied. (Mem. & Recommendation [DE #418].) Defendant objects to the M&R, arguing (1) that Judge Gates improperly placed upon defendant the burden to demonstrate that class certification is not warranted in this case; and (2) that the court should decertify the class because the plaintiffs are not similarly situated.

Defendant's first objection is based upon Judge Gates' statement that "[d]efendant has not shown, however, that these differences in the computation of gang time undermine the similarities that otherwise prevail with respect to donning and

doffing activities." (Mem. & Recommendation at 8.) stating, Judge Gates did not place the burden of proof upon Rather, Judge Gates found that plaintiffs had met their burden of demonstrating that they are similarly situated because each of them (1) is an hourly employee; (2) working at the same production facility; (3) on the production line; (4) is paid according to a gang-time system; (5) is required to wear protective equipment; and (6) is subject to a uniform policy or practice of being paid either three or ten minutes per day for donning and doffing activities. (Mem. & Recommendation at 7.) The statement upon which defendant relies is simply a rejection similarities defendant's argument that the plaintiffs are outweighed by the differences in the way gang time was computed for different job positions and departments.

A full and careful review of the M&R and other documents of record convinces the court that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved. Judge Gates correctly determined that the factual and employment settings of the individual plaintiffs are sufficiently similar to warrant class certification, that defendant has raised defenses that pertain to large groups of the class (if not to the class in its entirety), and that procedural and fairness considerations weigh in favor of class certification. Accordingly, the court ADOPTS the recommendation

of the magistrate judge as its own. For the reasons stated in the M&R, defendant's motion to decertify the class [DE #363] is DENIED.

This 24 7th day of September 2010.

MALCOLM J. HOWARD

Senior United States District Judge

At Greenville, NC #31